

REMARKS

Claims 1-4, 6-8 and 10-22 are pending in the application and stand rejected.

Rejection under 35 U.S.C §112

Claims 1-4, 6-8 and 10-22 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicant has amended the claims as suggested by the Examiner to address the Examiner's perceived deficiencies, and respectfully submits that this rejection is now moot.

Rejection under 35 U.S.C §101

Claims 16-18, 20 and 21 continue to stand rejected under 35 U.S.C. 101 as reciting a use without setting forth any steps involved in the process. Without agreeing with the Examiner, Applicant has further amended the claims and further notes that the claimed step of "applying" is a definite step to be performed. Applicant thus submits that this rejection is also moot and respectfully requests the Examiner to withdraw it.

Rejection under 35 U.S.C §102 and §103

Claims 1-4, 6-8 and 10-22 stand rejected under 35 U.S.C. 103(a) as being obvious in view of U.S. Patent No. 4,333,757 to Kurtzman Jr. Applicant respectfully disagrees and notes that claim 1 has been amended herein to specifically recite two separate and distinct fermentation steps as well as a specific ratio of fermented whey to carrier material. This ratio is important for obtaining the desired texture for the final product while preserving the benefits conferred by the fermented whey. The range of ratios claimed has been found to yield a biological fertilizer that supplies nutrients to the soil in a sustained release pattern that is believed to be caused by post-fermentation of the fertilizer by microorganisms in the soil.

Kurtzman, on the other hand, teaches a process for preparing a cellulosic medium for growing mushrooms wherein a liquid mixture such as whey is fermented. After fermentation, the

liquid is further mixed with water and raised to a temperature of 65-80 °C, following which it is contacted with dry cellulosic material in a proportion of about 3-10 parts liquid per part of cellulosic material (Kurtzman col. 4 ll. 8-12). As the Examiner will appreciate, this ratio is entirely different - and thus teaches directly away - from the ratio claimed herein by Applicant. Furthermore, Kurtzman teaches a single fermentation step, whereas Applicant claims two distinct fermentation steps. One of these fermentation steps is carried out in the solid phase, whereas Kurtzman's sole fermentation step is carried out in the liquid phase. For all of these reasons, Applicant respectfully submits that Kurtzman does not in fact render claim 1 as amended herein obvious.

Braconnier is similarly irrelevant, and teaches a process for converting organic waste matter to an end product wherein cheese whey is one possible such organic material (Braconnier col. 7 l. 13). Just like Kurtzman, Braconnier also involves a single fermentation step of a mixture of all starting materials (unlike Applicant's method in which a first fermentation step takes place in the complete absence of the cellulose rich carrier material) and does not even hint at performing a second fermentation step. Braconnier is also completely silent as to any ratio of fermented whey to carrier material. Thus, Applicant submits that Braconnier, or Braconnier and Kurtzman together, also do not render the invention recited in presently amended claim 1 anticipated nor obvious, and respectfully requests the Examiner to kindly reconsider and withdraw all rejections.

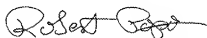
Claims 3, 4, 7, 8, 10-13, and 15-22 are dependent from claim 1, and Applicant thus submits that these claims are also allowable at least by virtue of their dependency from claim 1.

* * *

In view of the above, Applicant submits that the application is now in condition for allowance and respectfully urges the Examiner to pass this case to issue.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

Respectfully submitted,



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